Supreme Court, U.S.
FILED
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No. 07-

IN THE

Supreme Court of the United States

PAUL M. CHRISTIANSEN,

Petitioner,

v.

BANK OF AMERICA, N.T. & S.A.;
BANK OF AMERICA CORP.;
BRUCE NORMAN;
ANDREW SCHWARTZ;
JAMES BESSOLO and
MICHAEL HALLORAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a class action diversity suit for excessive trust fees charged by respondent bank, where a settlement is reached for well over $40,000,000, $13,000,000 of which is unclaimed and part of which is distributed by the District Court to 75 sectarian and nonsectarian charities, are not a civil religion created and petitioner's conscience coerced in violation of the First Amendment?

2. After granting over 28% in attorneys' fees from the class's share on the settlement, the District Court awarded an additional 28% of the $13,000,000, part of which was distributed to 75 charities but the fee was charged to the class in violation of the American rule that each party in a litigation bear its own expenses. Does this not violate the Due Process Clause of the Fifth Amendment?

PARTIES TO THE PROCEEDING

Petitioner Christiansen is a class member of plaintiff class which is composed of those with a beneficial interest in trusts administered by the respondent bank. The bank is the trustee. The individuals named are the administrators of the bank.

OPINION BELOW

The unreported Opinion of the United States Court of Appeals for the Ninth Circuit, dated November 27, 2007, may be found in Appendix A to this petition. The unreported Order Distributing Leftover Settlement Funds to Charities dated April 27, 2006 may be found in Appendix B. The unreported Order of the United States District Court for the Northern District of California dated February 27, 2006 may be found in Appendix C.

JURISDICTION

Jurisdiction of the Supreme Court is based upon the Court's ability to review a final judgment of the Court of Appeals. Art. 111, sec. II, para. 2. Jurisdiction of the District Court was based on diversity. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

The First Amendment reads: "Congress shall make no law respecting the establishment of religion; or prohibiting the free exercise thereof . . ." The Fifth Amendment reads: ". . . nor shall any person be deprived of life, liberty, or property without due process of law."

STATEMENT OF THE CASE

Suit was begun by the Mills Law Firm on behalf of over 6,000 persons against respondent bank for excessive charges made in administering trusts. The case was settled for over $40,000,000. Of this amount over $13,000,000 was unclaimed. The district court made two distribution orders, one to the class, and a second to 75 charities for the unclaimed amount.

The court allowed the Mills Firm over 30% in attorneys' fees for the first portion of the settlement which was over the $40,000,000 gross amount recovered. It then allowed an additional 28% of legal fees on the $13,000,000 in unclaimed funds, making nearly a double recovery of legal fees, *Cf. In re Motorsports, Merchandise Antitrust Litigation* , 160 F. Supp. 1393 (N.D. GA, 2001). There is no privity of contract between the class and the lawyers of the charities.

REASONS FOR GRANTING THE PETITION

I.

THE FIRST AMENDMENT GUARANTEES RELIGIOUS FREEDOM

A. The Establishment Clause

Petitioner raises as void judgment the payments to charities in violation of the Constitution. In making the second, excess award of attorneys' fees to the Mills Law Firm, the courts below took governmental action that tends to establish religion. From a review of the charities for whom Christiansen and the class paid, it will appear that the vast majority are nonsectarian civic welfare groups. (Appendix B) A small number are apparently Roman Catholic, Jewish and Korean church charities, *e.g.*, St. Gregory's Pantry.

But this does not end the dispute. Petitioner contends that in making the second supplemental award the court crossed a line of historic proportions, viz., the line between Faith and Reason, and gave to Reason the position once occupied by the Deity. This may sound far-fetched but, after all, the French enthroned Reason

after their revolution. And today, in this country, the secular humanists publish a journal that has Reason as its animating spirit. *See, e.g., The Freethinker.* The civic groups at bar partake of this spirit; they are all outgrowths of Reason applied to the social ills of the day. Indeed, the Court itself may have an institutional bias as it regularly employs Reason to decide cases; both are products of the Enlightenment. The point here is not, however, to settle an historical argument but to simply recognize a force which is shaping our culture and society in which Reason is for a significant number the highest Good. To turn a blind eye to the phenomenon is to take a very pinched opinion of what the courts below did, and what the First Amendment proscribes.

The language of the First Amendment takes a broad approach to religion, using the term "respecting" a religion. Surely, this is elastic enough to include attempts at deifying Reason, even if the adherents profess no knowledge of the attempts. Part of the problem is the currency of the notion, which obscures its roots; indeed, many of its adherents may deny that are elevating Reason to the pinnacle of belief. Others, more reflective, may frankly admit it. Both are protected. What is outside the pale is governmental action sanctioning it. *See, Everson v. Board of Education,* 330 U.S. 1, 67 S. Ct. 504 (no tax can be levied to support religion "whatever form it takes"; *Torcaso v. Watkins,* 367 U.S. 488, 81 S. Ct. 1680, 1683 (Government may neither help Deistic religions nor those resting "on different beliefs"). "The suggestion that government may establish an official or civic religion . . . strikes us as a contradiction that cannot be accepted." *Lee v. Weisman,* 505 U.S. 577,

112 S. Ct. 2649 (1992). But establishing a civic religion is the effect of the court's order.

Here the court ordered the payment of unclaimed trust fees to charity, community action groups for the most part. This smacks of donations to a civic religion; the sting is not less merely because the class must pay, in effect, only the 28% fee recovered by the attorneys. In this regard it is well to remember that had the "charities" been ineligible to receive the $13,000,000, the sum would have reverted to class members under the very order the district court made. (Appendix C)

B. Free Exercise

Petitioner also contends that in ordering the payment of the attorneys' fees, the exercise of his conscience was coerced in violation of the First Amendment. Writing for the Court, Justice Kennedy has stated that the state court disavows its own duty "to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Lee v. Weisman, id.*, 592. Christiansen, a religious man, is coerced to pay attorneys' fees in collecting charitable sums for organizations which may not accord with his beliefs. Throwing money at Godless civil action groups is antithetical to his beliefs; it could be better spent on groups more worthy. Whether the court agrees or not with him is beside the point that he has the right to select his own charities; to do otherwise is to coerce his conscience in contravention of the teaching of a majority of the Court in *Lee v. Weisman, supra,* (Justice Souter concurring) (Justice Scalia dissenting).

II.

PETITIONER WAS DENIED "DUE PROCESS" OF LAW

In making the nearly double fee award for 75 charities, the court violated the American rule that makes each party responsible for its own expenses. *Boeing Co. v. Van Germert*, 444 U.S. 472, 478. Here, the Court of Appeals holds that attorneys' fees may be assessed against the common fund, and second on the unclaimed funds distributed to charity which had been part of the common fund. The class pays twice for a benefit it doesn't receive, the amount given to charities.

The phrase "due process" is not pellucid, *Lee v. Weisman*, supra, 505 U.S. 620 (Souter, J., concurring). But, at the least, it must mean that well settled and recognized rules of law will be applied in every case before the courts. But, here, the court stands the American rule on its head by making the class pay for the charities. Surely, this is not "due." The charities, after all, get a windfall. Why shouldn't they pay? In these circumstances, petitioners' money is taken in violation of the Fifth Amendment.

CONCLUSION

In sum, petitioner contends that the payment to charities violates the Free Exercise and Establishment Clauses of the First Amendment and the Due Process Clause of the Fifth Amendment. Accordingly, the judgment should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A — MEMORANDUM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOVEMBER 27, 2007

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 06-15593

D.C. No. CV-94-02716-SBA

CAROL F. NICKEL,

Plaintiff - Appellee,

PAUL MERRITT CHRISTIANSEN,

Participant - Appellant,

v.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION; BANK OF AMERICA CORP; BRUCE NORMAN; ANDREW SCHWARTZ; JAMES BESSOLO; MICHAEL HALLORAN,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Appendix A

MEMORANDUM*

Submitted Aug. 17, 2007**

Before: FARRIS, BOOCHEVER, and LEAVY, Circuit Judges.

Paul Merritt Christiansen appeals pro se the district court's order approving the distribution of unclaimed settlement funds to charity in a diversity class action against Bank of America. Christiansen does not contest the distribution to charity, but argues that the class members should be reimbursed the legal fees previously paid as a percentage of the unclaimed settlement funds. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The Appellees assert that this appeal is untimely because the final orders Christiansen seeks to challenge were issued in May 2004 and his Notice of Appeal was not filed until March 21, 2006. This argument would have merit had the earlier orders stated definitively that unclaimed funds would be distributed to charity. To the contrary, the Reserve Clause contained two possible outcomes: distribution to the class or distribution to charity. It was not until January 9, 2006, that the district

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

court determined that the funds would go to charity and not to the class. Shortly thereafter, Christiansen filed a formal objection that was denied in a February 27, 2006, district court order. This order was the first final appealable order allocating the unclaimed funds to charity. Thus, Christiansen's appeal, filed on March 21, 2006, was timely, and this court has jurisdiction.

On appeal, Christiansen argues that the district court erred when it did not credit to the class the attorneys' fees that had been paid on the unclaimed funds. Christiansen does not object to the distribution to charities, but to the payment of attorneys' fees on funds that will not benefit the class. He also asserts that the class did not receive adequate notice of the attorneys' fees charged on funds allocated to the charities.

The Supreme Court has upheld the calculation of attorneys' fees as a percentage of the total fund. *See Boeing Co. v. Van Gemert,* 444 U.S. 472, 480-81 (1980); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers,* 904 F.2d 1301, 1311 (9th Cir.1990). The district court's "Second Order Awarding Plaintiff's Counsel Fees and Expenses and Second Honorarium" provided the class with adequate notice that this method of calculating attorneys' fees had been used. Thus, the district court did not abuse its discretion when it overruled Christiansen's request to credit the class for the attorneys' fees paid on the unclaimed funds.

AFFIRMED

APPENDIX B — ORDER DISTRIBUTING LEFTOVER SETTLEMENT FUNDS TO CHARITIES FILED APRIL 27, 2006

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 94-2716 SBA

CAROL F. NICKEL,

Plaintiff,

v.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, *et al.*,

Defendants.

ORDER DISTRIBUTING LEFTOVER SETTLEMENT FUNDS TO CHARITIES

This matter comes before the Court on the distribution of the leftover funds from the Second Settlement. Having read and considered the proposals submitted, the comments of the charities at the March 7 hearing, and the suggestions of counsel, the Court directs that the leftover settlement funds be distributed as directed, *infra*.

Appendix B

Distribution of the settlement funds will be stayed, pending the resolution of the appeal filed March 21, 2006 by Objector Paul Merritt Christiansen from this Court's order, dated February 24, 2006, denying his Request for Continuance and/or Alternative Payout of Unclaimed Funds.

I. INTRODUCTION

On January 9, 2006, this Court issued an order informing the parties to this case that under the *cy pres* doctrine and the Court's equitable powers, the Court had determined that over $5 million leftover in the Second Settlement Fund would be distributed to charities. The Court solicited proposals from charities, recommended by plaintiff, defendant and the Court. Because the underlying issues in this litigation involved trusts, the Court determined that the public interest would be best served by distributing the unclaimed funds to charities serving children, families and the elderly. This is because trusts are often established to provide for the basic care of children, families and the elderly, as well as to provide funds for education to children. Because the leftover funds stem from a litigation, the Court also found it appropriate to consider charities that provide legal assistance to children, families and the elderly.

On March 7, 2006, the Court held a hearing in which the charities addressed the Court's questions specifically directed to their organizations. In addition, the charities that appeared spoke to the Court regarding their mission, their intentions regarding any funds they

receive, and the impact it will have on the community. Counsel for the parties provided additional input on the charities.

On March 28, 2006, Class Representative Carol Nickel and Class Counsel The Mills Law Firm submitted their recommendations for charitable distributions. On March 29, 2006, Class Counsel Murray & Howard LLP submitted its recommendations for charitable distributions in which Defendant Bank of America N.T. & S.A. concurred. In addition, Class Counsel Murray & Howard LLP and Defendant Bank of America N.T. & S.A. requested that the Court stay the distribution pending the resolution of Mr. Christiansen's appeal. On April 6, 2006, Class Counsel Murray & Howard LLP wrote a letter to the Court commenting on Class Representative Carol Nickel and Class Counsel The Mills Law Firm's recommendations.

In reviewing the proposals and listening to the charities, the Court was impressed by their work. While these charities serve what some would describe as society's wrong — poverty, abuse, illness, crime — they are also a sign of what is right with our community. These charities feed our hungry, educate our children, shelter our elderly, aid people in crisis, serve as an example of what community service is and bring hope to all. The Court believes that distribution of the settlement funds will facilitate that hope.

The Court wishes to recognize the hard work that counsel for both sides in this case have made not only as

advocates for their clients, but also as advocates for the community. The Court appreciates the thought that went into their recommendations for the charities and their helpfulness and commitment in this process.

II. DISTRIBUTION

Although some of the charities did not attend the hearing, this in no way affected the Court's determination as to their receipt of any of the leftover funds.

Because the Court has focused on charities that directly serve children, families and the elderly, it finds that not all of the charities considered are appropriate recipients. The Court does not question the worthiness of these organizations or their contributions to the community. It merely observes that these organizations' goals and activities are tangential to, rather than directly related to, the community service the Court believes is appropriate for a case involving charitable trusts.

The leftover funds from the Second Settlement shall be distributed as follows:

1. Action Alliance for Children shall receive $25,000.

2. Alameda County Community Food Bank shall receive $60,000.

3. Alameda County Foster Youth Alliance shall receive $70,000.

4. The Alliance for Children's Rights shall receive $35,000.

5. Alternative Living for the Aging shall receive $50,000.

6. Angel Flight shall receive $150,000.

7. Bay Area Crisis Nursery shall receive $25,000.

8. Bay Area Community Services shall receive $50,000.

9. Bet Tzedek Legal Services shall receive $50,000.

10. Big Brothers Big Sisters of Marin & Napa Counties shall receive $400,000.

11. Boys & Girls Clubs of Oakland shall receive $100,000.

12. Boys Hope Girls Hope, San Francisco shall receive $100,000.

13. California Youth Connection shall receive $100,000.

14. CASA of Humboldt shall receive $50,000.

15. Center for Human Development shall receive $50,000.

16. Chaparral House shall receive $25,000.

17. Children's Advocacy Institute shall receive $35,000.

18. Children's Bureau shall receive $50,000.

19. Children's Hospital of Los Angeles shall receive $100,000.

20. Children's Hospital of Oakland shall receive $300,000.

21. Children's Institute shall receive $50,000.

22. Children's Network International shall receive $25,000.

23. Children NOW shall receive $50,000.

24. Community Gatepath shall receive $50,000.

25. Community Law Center, School of Law shall receive $50,000.

26. Contra Costa Crisis Center shall receive $50,000.

27. Covenant House California shall receive $50,000.

28. Crisis Support Services of Alameda County shall receive $50,000.

29. Curry Senior Center shall receive $50,000.

30. Diablo Valley Foundation for the Aging shall receive $50,000.

31. Donald P. McCullum Youth Court, Inc. shall receive $50,000.

32. Experience Corps Bay Area shall receive $50,000.

33. Facing History and Ourselves shall receive $200,000.

34. Family House shall receive $50,000.

35. Family Stress Center shall receive $22,831.24.

36. Fight Crime: Invest in Kids shall receive $50,000.

37. Fresh Lifelines for Youth shall receive $65,000.

38. Homeboy Industries shall receive $100,000.

39. Hospia Foundation (formerly, Hospice of Marin Foundation) shall receive $35,000.

40. Hunger Defense Fund shall receive $25,000.

41. Korean Churches for Community Development Financial Literacy Program Housing Counseling Agency shall receive $25,000.

42. Laura's House shall receive $25,000.

43. The Legal Aid Society shall receive $100,000.

44. Legal Assistance for the Elderly shall receive $35,000.

45. Legal Assistance for Seniors shall receive $50,000.

46. Life After Exoneration Program shall receive $50,000.

47. Marin Education Fund shall receive $25,000.

48. Martha's Village and Kitchen shall receive $25,000.

49. Mexican American Community Services Agency, Inc. shall receive $100,000.

50. The Mentoring Center shall receive $25,000.

51. Moss Beach Homes, Inc. shall receive $84,000.

52. North Street Community Resource Center shall receive $25,000.

53. On Lok shall receive $50,000.

54. Parental Stress Services, Inc. shall receive $35,000.

Appendix B

55. Plaza de la Raza shall receive $75,000.

56. Positive Coaching Alliance shall receive $100,000.

57. Project Open Hand shall receive $25,000.

58. Retirement Housing Foundation shall receive $50,000.

59. Saint Gregory's Food Pantry shall receive $25,000.

60. Saint Vincent de Paul's Village shall receive $30,000.

61. Santa Clara University Katherine & George Alexander Community Law Center shall receive $25,000.

62. School to College Program shall receive $150,000.

63. Second Harvest Food Bank shall receive $25,000.

64. Senior Community Centers shall receive $50,000.

65. Seven Teepees Youth Program shall receive $50,000.

66. Stand Up For Kids shall receive $25,000.

67. Stanford Settlement Neighborhood Center shall receive $25,000.

68. Sutter VNA & Hospice shall receive $150,000.

69. Toussaint Youth Villages shall receive $50,000.

70. 826 Valencia shall receive $50,000.

71. Voices for Children shall receive $45,000.

72. Western Center Law and Poverty shall receive $50,000.

73. Youth Alive! shall receive $60,000.

74. Youth Law Center shall receive $50,000.

75. Hospice of Tulare County shall receive $300,000.

III. DISBURSEMENT OF INTEREST

A total of $5,011,831.24 has been allocated to charities. Any interest accrued before the date of disbursement shall be distributed proportionally between the 75 charities to whom the Court has directed a portion of the leftover funds shall be distributed.

IV. CONCLUSION

The Court applauds the excellent work of all of these charities.

IT IS HEREBY ORDERED THAT the leftover funds from the Second Settlement Fund shall be

distributed in the manner directed in Section II-III, *supra*. Each recipient is reminded that these funds are to benefit communities in California.

IT IS FURTHER ORDERED THAT the distribution will be stayed, pending the resolution of the appeal by Paul Merritt Christiansen of this Court's denial of Mr. Christiansen's Request for Continuance and/or Alternative Payout of Unclaimed Funds. Class Counsel shall inform the Court when the appeal has been resolved.

IT IS FURTHER ORDERED THAT within 90 days of receipt of the distribution, each recipient shall submit a report describing how they are using the funds. The recipients shall submit two copies of these reports to the Court. One copy shall be placed in the *Nickel v. Bank of America et al.*, Case No. C 94-2716 file. The other shall be marked "Chambers Copy." These reports should be submitted to:

The Honorable Saundra Brown Armstrong
United States District Court
ATTN: *Nickel v. Bank of America. et al.*,
Case No. C 94-2716 90-day Charity Report
1301 Clay Street
Oakland, California 94612

Appendix B

IT IS SO ORDERED.

Dated: April 27, 2006

s/ Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA FILED FEBRUARY 27, 2006

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 94-2716 SBA

CAROL F. NICKEL, on behalf of herself and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, et al.,

Defendants.

ORDER

On January 26, 2006, a former trustee and beneficiary Paul Merritt Christiansen filed a "Request for Continuance and/or Alternative Payout of Unclaimed Funds" ("Request") in the above-captioned matter. By order dated January 30, 2006, this Court directed the parties to meet and confer regarding the objections raised in Mr. Christiansen's Request and, if unable to reach a resolution of those objections, submit supplemental briefing to this Court. The parties were unable to resolve the matter and have submitted supplemental briefing.

Appendix C

In his supplemental briefing, Mr. Christensen raises two objections: 1) he and other class members did not properly receive notice of the past *cy pres* distribution of unclaimed funds from the first settlement and the future *cy pres* distribution of settlement funds from the second settlement; and 2) in light of the unclaimed funds remaining from the second settlement, a credit of legal fees and costs belongs to the class.[1] He therefore requests the January 9, 2006 Order be amended to state that the class "owns the credit of paid legal fees and costs," class counsel be ordered to determine the "percentage dollar amount of legal fees and costs paid by the class," and this amount be deducted from the funds previously distributed, and to be distributed, to charities, and paid to the known class members.

First, as this Court has previously made clear, Mr. Christensen and other class members were not entitled to additional notice prior to the Court's determination of how to distribute unclaimed settlement funds. The First and Second Class Notices advised class members that unclaimed funds would be redistributed to the class or to charities, per the determination of the Court. *See* Declaration of Derek G. Howard in Support of Memorandum of Points and Authorities re. January 9, 2006 Order Distributing Unclaimed Funds ("Howard

1. Additionally, Mr. Christensen does not "waive rights" regarding the Court's January 9, 2006 order. It is not clear to the Court what "rights" he is reserving. He does not indicate to the Court what rights he has under the Court's January 9, 2006 order, nor any legal authority supporting ability to "waive rights."

Decl."), Exhs. D & F. That is precisely what the Court ordered in its April 23, 2004 and January 9, 2006 orders. No one filed any objections to either notice.

Second, in contravention of this Court's January 30, 2006 order, Mr. Christensen failed to cite to any case authority in support of his contention that the future *cy pres* order should be amended because he and other class members are owed a "credit." Rather, Mr. Christiansen states:

> [I]f five members of a CLASS all suffer the same compensable damages and one member's share goes unclaimed . . . the legal fees and costs paid are in fact a SEVERED AMOUNT and not UNCLAIMED FUNDS. *All CLASS attorneys were notified on February 5, 2006 in writing of a potential CONFLICT regarding this issue regarding fees, and did not respond. Further rationale of this premise is that a credit of LEGAL FEES and COSTS is a remaining credit of the KNOWN CLASS. These expenses in the millions of dollars were paid by the KNOWN CLASS, and not by the CHARITIES entitled to receive the unclaimed GIFT.

Mot. at 3-4 (ellipses and emphases in original). Mr. Christiansen conclusorily states that a portion of the unclaimed funds represents legal fees and costs that should be credited to the class. However, this statement is utterly without foundation. Mr. Christiansen does not

explain what portion of the unclaimed funds represents this credit, nor how such a credit would be calculated, nor how such a "credit" would impact this Court's prior award of attorneys' fees for class counsel's work with regard to the second settlement. In fact, prior to the Court's determination of fees for the second settlement, Mr. Christiansen filed an objection which objection was duly considered by the Court and specifically noted at the May 3, 2004 hearing on Plaintiff's motion for fees. Mr. Christiansen did not appeal that order.

Mr. Christiansen, and all other class members, had already received notice that this Court would potentially make a determination to distribute unclaimed settlement funds to charities. He has not provided the Court with any rationale or authority for finding a "credit" exists in the unclaimed funds, or a method of calculating such a "credit." Furthermore, this Court has already addressed the issue of attorneys' fees concerning the second settlement, and no one, including Mr. Christiansen appealed that order.

Accordingly,

Mr. Christiansen's objections and Request for Continuance and/or Alternative Payout of Unclaimed Funds is DENIED.

IT IS SO ORDERED.

s/ Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

Dated: 2/24/06